

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

March 20, 2017

To: Subcommittee on Environment Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Legislative Hearing on H.R. 806, the “Ozone Standards Implementation Act of 2017”

On **Wednesday, March 22, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Environment will hold a legislative hearing on H.R. 806, the “Ozone Standards Implementation Act of 2017,” which was introduced by Rep. Olson (R-TX) on February 1, 2017. During the 114th Congress, the Committee held three hearings on the Environmental Protection Agency’s (EPA) ozone standard and H.R. 4775, legislation virtually identical to H.R. 806: [June 16, 2015](#), [June 12, 2015](#), and [April 14, 2016](#). For further background information on EPA’s ozone standard and the Committee’s consideration of H.R. 4775, please see the memos from the previous hearings.

I. NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

The Clean Air Act (CAA) requires EPA to set national ambient air quality standards (NAAQS) for certain pollutants that endanger public health and the environment. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an “adequate margin of safety.” For certain pollutants emitted from “numerous and diverse sources”, the primary NAAQS identify the level of ambient air pollution that is “safe” to breathe.¹ While costs are not considered in establishing these standards, costs can be considered in developing plans to achieve the necessary reductions in air pollutants to meet the standards. These health-

¹ There are NAAQS for six criteria pollutants: lead, particulate matter (PM_{2.5} or PM₁₀), ozone, Nitrogen Dioxide (NO₂), sulfur dioxide (SO₂), and carbon monoxide.

based standards are the cornerstone of the CAA. EPA must review each NAAQS every five years and make revisions as appropriate.²

On October 1, 2015, EPA issued a final rule tightening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.³ This decision was based on the review of thousands of studies showing ozone's effects on public health and welfare. Ozone, also known as smog, has a number of health impacts, ranging from increased asthma attacks in children and increased cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and ecosystems. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science supports a standard within a range of 70 ppb down to 60 ppb.⁴ The estimated net benefits of the updated ozone NAAQS are between \$1.5 and \$4.5 billion, excluding California. The estimated net benefits in California are between \$0.4 and \$1.3 billion.

A. Opponents' Claims About the Ozone Rule

1. Non-Attainment Areas

Critics of the updated ozone NAAQS have raised concerns regarding the number of new ozone non-attainment areas that will result from strengthening the standards. However, a number of existing federal rules will help to reduce ozone emissions,⁵ and thus the number of non-attainment areas will be much smaller than many have previously projected. By 2025, only 14 counties are expected to exceed the 70 ppb standard.⁶

2. Background Ozone

Some stakeholders have voiced concerns about the impact of "background ozone" on their ability to meet the 70 ppb ozone standard. "Background ozone" is ozone that results from natural events – such as wildfires or the breakdown of hydrocarbons released by plants and soils – or from man-made pollution from sources outside the U.S. The CAA does not hold states

² Clean Air Act at § 109(d)(1).

³ U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule) (hereinafter "Ozone NAAQS").

⁴ See U.S. EPA, *Overview of EPA's Updates to the Air Quality Standards for Ground-Level Ozone* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/overview_of_2015_rule.pdf).

⁵ See, e.g., Tier 3 standards for vehicles and fuels, Cross State Air Pollution Rule, and the New Source Performance Standards for the Oil and Gas Industry.

⁶ U.S. EPA, *Ozone by The Numbers* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/20151001_bynumbers.pdf). These figures are based on 2012-2013 air quality data. Final designations will likely be made based on 2014-2016 data which will likely lead to even fewer non-attainment areas.

responsible for these background emissions. These stakeholders argue that EPA should not have revised the ozone standard since background ozone concentrations in several areas are above 70 ppb, making the revised ozone NAAQS impossible to meet.⁷ While EPA does anticipate that there may be a limited number of areas where high ozone levels could be attributed to background ozone, EPA analysis indicates that background ozone is “not the sole contributor to an exceedance of the revised NAAQS” and will not prevent areas from meeting the revised 70 ppb standard.⁸

EPA has worked closely with stakeholders to further their understanding of background ozone, and is currently soliciting additional comments and “actively evaluating the need for further guidance and/or rules to address [background ozone] based on feedback received.”⁹

3. *Preconstruction Permitting*

The CAA requires major new or expanding stationary sources of air pollution to obtain permits before they start construction to ensure they will not significantly increase air pollution above levels that are safe to breathe. The preconstruction permitting provisions achieve this by: (1) requiring new and modified sources to use control technology to reduce their emissions; and (2) to assess, and if necessary address, their remaining air quality impacts. States, not EPA, issue the vast majority of preconstruction permits.

Some stakeholders raised concerns about projects with pending preconstruction permit applications and the potential impact of a revised NAAQS.¹⁰ EPA addressed these concerns in the final 2015 ozone NAAQS rule, which grandfathered permit applications that were well along in the permitting process. The rule specifically grandfathers permits that had been determined to be complete on or before October 1, 2015, or for which public notice of a draft permit or preliminary determination had been published as of the effective date of the revised standard. Sources eligible for grandfathering are allowed to meet the requirements associated with the prior ozone NAAQS rather than the revised standard.

B. Impact of H.R. 806

⁷ U.S. EPA, *Ozone NAAQS*, 80 Fed. Reg. 65292 at 65327 (Oct. 26, 2015) (final rule).

⁸ *Id.*

⁹ U.S. EPA, *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements*, 81 Fed. Reg. 81276, at 81305 (Nov. 17, 2016) (proposed rule). See U.S. EPA, *Implementing the 2015 Ozone National Ambient Air Quality Standards* (www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf); *Background Ozone Workshop and Information* (www.epa.gov/ozone-pollution/background-ozone-workshop-and-information).

¹⁰ See, e.g., U.S. EPA, *Ozone NAAQS*, 80 Fed. Reg. 65292 at 65431 (Oct. 26, 2015) (final rule).

H.R. 806 would drastically alter the CAA to weaken air quality protections, allow more pollution, and threaten public health. Most of the changes specifically target the 2015 ozone NAAQS; however, the bill also undercuts the NAAQS process for all other air pollutants.¹¹ These proposed changes would undermine significantly the features of the CAA that have driven important progress in improving air quality and public health.

The overall effect of the proposed changes included in H.R. 806 will be to delay the implementation of health-based air quality standards, make achievement of more protective standards more difficult, and inject cost and technological feasibility considerations into the standards-setting process. The bill would also fundamentally alter those CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date scientific data, findings, and knowledge about air pollutants and their health and environmental impacts.

For a more detailed section-by-section analysis of H.R. 806, please see the attached appendix.

II. WITNESSES

The following witnesses are expected to testify:

Seyed Sadredin

Executive Director/Air Pollution Control Officer
San Joaquin Valley Air Pollution Control District

Nancy Vehr

Air Quality Administrator
Wyoming Department of Environmental Quality

Marc A. R. Cone P.E.

Director, Bureau of Air Quality
Maine Department of Environmental Protection

Sean Alteri

Director, Division for Air Quality
Kentucky Department of Environmental Protection

Dr. Homer Boushey

Professor of Medicine, Division of Pulmonary, Critical Care Medicine
University of California, San Francisco
On behalf of the American Thoracic Society

Kurt Karperos

Deputy Executive Officer
California Air Resources Board

¹¹ See note 1 (referencing five other NAAQS criteria pollutants).